

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

FAWN BROOKS,

Plaintiff,

V.

SKAGIT COUNTY PUBLIC HEALTH et al.,

Defendants.

CASE NO. 2:23-cv-01708-LK

**ORDER DISMISSING AMENDED
COMPLAINT**

This matter comes before the Court sua sponte following Plaintiff Fawn Brooks' filing of an amended complaint. Dkt. No. 7. Ms. Brooks, who is proceeding pro se and *in forma pauperis* ("IFP"), seeks money damages and an injunction arising from Defendants' denial of her application for emergency rental assistance. *See id.* at 4, 14. For the reasons discussed below, the Court dismisses her complaint without prejudice pursuant to 28 U.S.C. § 1915(e)(2)(B).

I. BACKGROUND

On November 9, 2023, United States Magistrate Judge Brian A. Tsuchida granted Ms. Brooks' application to proceed IFP. Dkt No. 4. On November 15, 2023, after screening her

1 complaint pursuant to 28 U.S.C. § 1915(e), the Court declined to issue summons, dismissed Ms.
 2 Brooks' initial pleading without prejudice for failure to state a claim, and permitted her leave to
 3 file an amended complaint within 30 days. Dkt. No. 6 at 3–4. The Court explained that although
 4 Ms. Brooks may have a viable claim against one or more of the named Defendants, “the allegations
 5 contained in the complaint [we]re too vague and conclusory to give rise to an inference of unlawful
 6 conduct or to allow Defendants to effectively respond.” *Id.* at 3. In addition, the Court cautioned
 7 Ms. Brooks that she may be legally barred from seeking relief from a state agency for constitutional
 8 violations. *Id.*

9 On December 13, 2023, Ms. Brooks timely filed an amended complaint. Dkt. No. 7 at 1.¹
 10 She alleges that she is “a single person of low income” who, on or about August 17, 2022, applied
 11 for a federally funded Emergency Rental Assistance (“ERA”) program² through “the Skagit
 12 Portal,” but was denied as a “result of not being of high . . . importance to help because of race and
 13 internal interference.” Dkt. No. 7 at 4–5, 12; *see also id.* at 1 (“This is a claim . . . for the cause of
 14 16 months of personal injury of [e]xtreme [e]motional distress by denying her a Federal statutory
 15 program with discriminatory intent[.]”); *id.* at 6 (“Despite Brooks[’] repeat distressed emails,
 16 attempts and even case number assignment, [f]rom August 2022–June 2023 Brooks was not able
 17 to benefit from ERAP 2.0, Skagit ERPP,” and other housing assistance resources). This denial
 18 “created very high stress levels” for her, exacerbated her mental health symptoms, and damaged
 19 her relationship with her landlord which “will result in an eviction from her home of 7 years and
 20 make it difficult to attain new housing.” *Id.* at 4; *see also id.* at 12.

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22 ¹ Ms. Brooks' amended complaint names the same five Defendants as her initial complaint, all of whom she alleges
 23 were “working under the American Rescue Act of 2021”: (1) Skagit County Public Health; (2) Community Action of
 24 Skagit County; (3) Washington Department of Commerce; (4) Geocko, Inc., d.b.a. Livestories, Inc.; and (5) Allysen
 Yamauchi, in her “official and individual capacity.” *See id.* at 2–4; Dkt. No. 5 at 2–3.

2 See U.S. Dep’t of Treasury, *Emergency Rental Assistance Program*, <https://home.treasury.gov/policy-issues/coronavirus/assistance-for-state-local-and-tribal-governments/emergency-rental-assistance-program> (last visited Jan. 12, 2024).

1 Ms. Brooks takes issue with several aspects of how Defendants handled her application for
2 the emergency eviction prevention relief established by the federal government in response to the
3 COVID-19 pandemic. She questions Livestories' authority—as “a tech/software company”—to
4 approve or deny such applications, and asserts that its decision to deny her application due to her
5 “landlord’s nonparticipation” does not comport with the requirements under the relevant statute,
6 15 U.S.C. § 9058a. *Id.* at 5. She also describes in more detail her communications with two staff
7 members of Defendant Community Action, a local housing assistance resource in Skagit County:
8 Eviction Prevention Specialist Noemi Ramirez and Defendant Yamauchi, a housing coordinator
9 at the organization. *See id.* (“Brooks emailed Ramirez about [her] current Mental Health crisis, job
10 loss, and the impact of denial,” and “sent a complaint to [Community Action] on 10/26/2022 and
11 exchanged emails with Yamauchi [on] Oct 26, 27, 28, Nov 1, 2, 3, and 7, without any resolve”).
12 Ms. Brooks alleges that Yamauchi told her that “the requests from [Livestories were] approved by
13 both Skagit County and Commerce” but that Community Action “would not accept [her] self-
14 attestation forms[.]” *Id.*; *see also id.* at 6 (Livestories was “authorized by Skagit and Commerce to
15 make final approval and flagged Brooks’ application without due process or investigating”). With
16 respect to the overall process, she avers that Livestories’ “standard practice only allows a 5-day
17 appeal and grievance window where 30–90 days is standard among these types of funds,” and that
18 Community Action and Livestories did not follow the statutory guidelines for “establish[ing]
19 policies and procedures to govern the implementation of their ERA programs[.]” *Id.* at 6; *see also*
20 *id.* (“On 01/17/23 Brooks emailed Yamauchi inquiring of other housing programs for help and was
21 unanswered.”).

22 Further, Ms. Brooks once again alleges that “Yamauchi and another director ha[ve] a
23 conflict of interest with a very adverse party to her personal rental situation.” *Id.*; *see* Dkt. No. 5
24 at 5. And she also re-alleges that “White Americans were excluded in [the] Skagit, [Community

1 Action], [Livestories], and Commerce [s]cope of work contracts.” Dkt. No. 7 at 5; *see* Dkt. No. 5
 2 at 4. Based on these allegations, Ms. Brooks claims that

3 Defendants, by and through employees, and staff, breached the standard of care
 4 owed to [her] by: 1) failing to intervene where due process was proper[;] 2) failing
 5 to recognize the deprivation’s extreme results of homelessness[;] 3) [f]ailing to
 6 include white Americans in scope of work[;] 4) allowing unauthorized criteria to
 7 adversely block her approval[;] 5) [i]gnoring Brooks[’] complaints[; and]
 8 6) violations for serious conflicts of interest.

9 Dkt. No. 7 at 6–7. As in her initial complaint, she invokes Title VI of the Civil Rights Act of 1964,
 10 42 U.S.C. § 2000d *et seq.*, the Fourteenth Amendment, 42 U.S.C. § 1983, and Section 4.96.020 of
 11 the Revised Code of Washington. *Id.* at 7–11; *see* Dkt. No. 5 at 5–10. She asserts causes of action
 12 for negligent infliction of emotional distress, abuse of power, and negligence, and also argues that
 13 Community Action is “barred from a defense.” Dkt. No. 7 at 7–11.

II. DISCUSSION

A. Jurisdiction

14 This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. § 1331
 15 because Ms. Brooks alleges constitutional violations under 42 U.S.C. § 1983 and statutory
 16 violations under the Civil Rights Act of 1964. *See* Dkt. No. 7 at 7–9. To the extent she alleges any
 17 state law claims, the Court has supplemental jurisdiction over such claims under 28 U.S.C.
 18 § 1337(a).

B. Section 1915(e)(2)(B)

19 Like her original complaint, Ms. Brooks’ amended complaint requires a pre-answer
 20 screening pursuant to 28 U.S.C. § 1915(e)(2)(B). Section 1915 directs the Court to dismiss an IFP
 21 plaintiff’s case “at any time” if it determines that the complaint is frivolous, fails to state a claim
 22 on which relief may be granted, or seeks monetary relief against a defendant who is immune from
 23 such relief. 28 U.S.C. § 1915(e)(2)(B)(i)–(iii). Section 1915(e) applies to all IFP proceedings, not
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1 just those filed by prisoners, *Lopez v. Smith*, 203 F.3d 1122, 1129 (9th Cir. 2000) (en banc), and
 2 the standard for determining whether a plaintiff has failed to state a claim under Section 1915(e)
 3 is the same as the standard applied under Federal Rule of Civil Procedure 12(b)(6), *Barren v.*
 4 *Harrington*, 152 F.3d 1193, 1194 (9th Cir. 1998). Dismissal under Rule 12(b)(6) may be based on
 5 either the lack of a cognizable legal theory or the absence of sufficient facts alleged under a
 6 cognizable legal theory. *Shroyer v. New Cingular Wireless Servs., Inc.*, 622 F.3d 1035, 1041 (9th
 7 Cir. 2010).

8 And although “a *pro se* complaint, however inartfully pleaded, must be held to less
 9 stringent standards than formal pleadings drafted by lawyers,” *Erickson v. Pardus*, 551 U.S. 89,
 10 94 (2007) (per curiam) (quoting *Estelle v. Gamble*, 429 U.S. 97, 106 (1976)), *pro se* litigants still
 11 must set forth factual content sufficient to give rise to the reasonable inference that the defendants
 12 are liable for the misconduct alleged, *see Fed. R. Civ. P. 8(a); Ashcroft v. Iqbal*, 556 U.S. 662, 678
 13 (2009); *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007).

14 **C. Ms. Brooks’ Amended Complaint Fails to State a Claim on Which Relief May Be
 Granted**

15 In her amended complaint, Ms. Brooks does more to fill in the blanks beyond conclusory
 16 assertions, but nevertheless fails to state a claim upon which relief may be granted. Accordingly,
 17 for the reasons discussed below, the Court declines to issue a summons in this matter, dismisses
 18 the amended complaint without prejudice, and grants Ms. Brooks one final opportunity to cure the
 19 deficiencies identified herein. *See Akhtar v. Mesa*, 698 F.3d 1202, 1212 (9th Cir. 2012) (“A district
 20 court should not dismiss a *pro se* complaint without leave to amend unless it is absolutely clear
 21 that the deficiencies of the complaint could not be cured by amendment.” (cleaned up)).
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1 1. Title VI of Civil Rights Act of 1964

2 Ms. Brooks' first cause of action is for violations of Title VI of the Civil Rights Act of
 3 1964, 42 U.S.C. § 2000d *et seq.*, based on Defendants' alleged "exclusion of white Americans" in
 4 the "scope of work" contracts related to the Skagit County ERA program. Dkt. No. 7 at 5, 7–8,
 5 21–22.³ The scope of work attached to her amended pleading provides that "[c]ontractor shall
 6 promote racial equity in who is served, with a focus on equity for groups of people who historically
 7 have not been provided equitable access to rent assistance and those who have disproportionately
 8 been impacted by the COVID-19 outbreak[.]" Dkt. No. 7 at 21–22; *see id.* at 22 (listing as
 9 examples: "Latinx or Hispanic, young adults, Black or African American, American Indian,
 10 Alaska Native, Native Hawaiian or Pacific Islander"). In addition, the document states that
 11 "[c]ontractor shall ensure equitable access to ERAP 2.0," which means "that the race and ethnicity
 12 of people entering ERAP 2.0 are similar to the community demographics." *Id.* at 22.

13 Title VI of the Civil Rights Act states that "[n]o person in the United States shall, on the
 14 ground of race, color, or national origin, be excluded from participation in, be denied the benefits
 15 of, or be subjected to discrimination under any program or activity receiving Federal financial
 16 assistance." 42 U.S.C. § 2000d. Plaintiffs may seek damages and injunctive relief to remedy
 17 violations of Title VI. *See* 42 U.S.C. § 2000d-7(a)(1)-(2); *Alexander v. Sandoval*, 532 U.S. 275,
 18 279 (2001). However, Section 2000d prohibits only intentional discrimination. *Sandoval*, 532 U.S.
 19 at 280–81. To state a claim for damages under Title VI, "a plaintiff must allege that (1) the entity
 20 involved is engaging in racial discrimination; and (2) the entity involved is receiving federal
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22 ³ Ms. Brooks does not argue that Congress intended to create a private right of action when enacting 15 U.S.C. § 9058a,
 23 and most courts that have considered this issue have found that no such right exists. *See, e.g., Turner v. Westfield*
Washington Twp., No. 22-1969, 2022 WL 17039087, at *1 (7th Cir. Nov. 17, 2022); *Wexler v. Dep't of Child. &*
Fams., No. 6:22-CV-1111-RBD-DCI, 2022 WL 5250140, at *1–2 (M.D. Fla. Sept. 19, 2022), *report and*
recommendation adopted, 2022 WL 5245336 (M.D. Fla. Oct. 6, 2022). Thus, any claims based purely on Defendants'
 24 failure to comply with this statute are dismissed. *See, e.g.*, Dkt. No. 7 at 9.

1 financial assistance.” *Fobbs v. Holy Cross Health Sys. Corp.*, 29 F.3d 1439, 1447 (9th Cir. 1994),
 2 *overruled on other grounds by Daviton v. Columbia/HCA Healthcare Corp.*, 241 F.3d 1131 (9th
 3 Cir. 2001) (en banc).⁴

4 Ms. Brooks appears to have sufficiently alleged that Defendants were receiving federal
 5 financial assistance at the time of the complained-of conduct. *See* Dkt. No. 7 at 3–4, 7; 42 U.S.C.
 6 § 2000d-4a(1). With respect to racial discrimination, however, Ms. Brooks’ allegations do not give
 7 rise to a plausible inference of a Title VI violation. She contends that in light of the “scope of
 8 work” language quoted above, Defendants discriminated against “white Americans” like herself
 9 when processing ERA applications. Dkt. No. 7 at 5–8. Without more, such conclusory
 10 allegations—i.e., that white Americans were excluded because the ERA program sought to
 11 promote racial and ethnic equity—does not actually suggest that she, or any other white applicant,
 12 was excluded from participation in, denied the benefits of, or otherwise subjected to discrimination
 13 based on their race. *See, e.g., Mendoza v. Inslee*, No. 3:19-CV-06216-BHS, 2020 WL 1271574, at
 14 *4 (W.D. Wash. Mar. 17, 2020) (“Although plaintiff’s complaint is filled with conclusory
 15 allegations of discrimination, she does not plausibly allege facts to support that any particular
 16 defendant purposely discriminated against her[.]”); *Webb v. Busey*, No. 3:22-CV-5030-DGE, 2022
 17 WL 306071, at *2 (W.D. Wash. Feb. 2, 2022) (same).

18 Ms. Brooks’ Title VI claim is therefore dismissed without prejudice, and any amended
 19 pleading should provide additional facts explaining what happened during her application process
 20 such that she believes she was denied or discriminated against on the basis of her race. *See Trask,*
 21 *v. R.C. Willey*, No. 1:23-CV-00442-BLW, 2023 WL 8372480, at *2 (D. Idaho Dec. 4, 2023)

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 24 ⁴Courts in this district have generally found that private Title VI claims are not permitted against individual defendants sued in their individual capacity such as Yamauchi. *See, e.g., Webb v. Dep’t of Soc. & Health Servs.*, No. 3:21-CV-05761-TL-JRC, 2021 WL 9037644, at *2 (W.D. Wash. Dec. 28, 2021), *report and recommendation adopted*, 2022 WL 1831048 (W.D. Wash. June 3, 2022).

1 (“These additional facts need not be overly detailed, but they must provide enough information for
 2 the Court to evaluate whether the claim is plausible. The mere allegation of racial discrimination,
 3 without more, is not enough.”).

4 2. Section 1983

5 “Section 1983 provides a cause of action for ‘the deprivation of any rights, privileges, or
 6 immunities secured by the Constitution and laws’ of the United States.” *Wilder v. Virginia Hosp.*
 7 *Ass’n*, 496 U.S. 498, 508 (1990) (quoting 42 U.S.C. § 1983). To establish liability under Section
 8 1983, “a plaintiff must show both (1) deprivation of a right secured by the Constitution and laws
 9 of the United States, and (2) that the deprivation was committed by a person acting under color of
 10 state law.” *Tsao v. Desert Palace, Inc.*, 698 F.3d 1128, 1138 (9th Cir. 2012) (quoting *Chudacoff*
 11 *v. Univ. Med. Ctr. of S. Nev.*, 649 F.3d 1143, 1149 (9th Cir. 2011)); *see also Graham v. Connor*,
 12 490 U.S. 386, 393–94 (1989) (Section 1983 “is not itself a source of substantive rights, but merely
 13 provides a method for vindicating federal rights elsewhere conferred” (cleaned up)). Vague or
 14 conclusory allegations of participation in civil rights violations, however, are insufficient to
 15 support a claim under Section 1983. *Ivey v. Bd. of Regents*, 673 F.2d 266, 268 (9th Cir. 1982).

16 Local governing bodies can be sued directly under Section 1983 for monetary, declaratory,
 17 or injunctive relief where the unconstitutional deprivation “implements or executes a policy
 18 statement, ordinance, regulation, or decision officially adopted and promulgated by that body’s
 19 officers.” *Monell v. Dep’t of Soc. Servs. of City of New York*, 436 U.S. 658, 690 (1978). “Under
 20 *Monell*, plaintiffs suing a municipal entity for damages under 42 U.S.C. § 1983 ‘must show that
 21 their injury was caused by a municipal policy or custom.’” *Sabra v. Maricopa Cnty. Cnty. Coll.*
 22 *Dist.*, 44 F.4th 867, 883 (9th Cir. 2022) (quoting *Los Angeles Cnty. v. Humphries*, 562 U.S. 29,
 23 30–31 (2010)). *Monell* liability generally occurs in “three situations: when the plaintiff was injured
 24 pursuant to an expressly adopted official policy; a long-standing practice or custom; or the decision

1 of a final policymaker.” *Ellins v. City of Sierra Madre*, 710 F.3d 1049, 1066 (9th Cir. 2013)
 2 (quotation marks omitted); *accord Gordon v. Cnty. of Orange*, 6 F.4th 961, 973–74 (9th Cir. 2021).

3 Although Ms. Brooks’ amended complaint appears to cite Defendants’ policy or custom as
 4 theories of *Monell* liability, the “first inquiry” in any suit pursuant to Section 1983 “is whether the
 5 plaintiff has been deprived of a right ‘secured by the Constitution and laws.’” *Benavidez v. Cnty.*
 6 *of San Diego*, 993 F.3d 1134, 1145 (9th Cir. 2021) (quoting *Baker v. McCollan*, 443 U.S. 137, 140
 7 (1979)). The Court liberally construes Ms. Brooks’ constitutional claims under Section 1983 as
 8 arising under the Due Process Clause of the Fourteenth Amendment. *See* Dkt. No. 7 at 7–11. In
 9 addition, the Court assumes without deciding that the nonprofit and individual Defendants were
 10 acting under color of state law by virtue of their implementation of the federal COVID relief
 11 program, i.e., performing a public function. *See, e.g., James v. FPI Mgmt., Inc.*, No. C22-0336-
 12 JLR, 2022 WL 1499590, at *5 (W.D. Wash. May 11, 2022) (setting forth standard for state actor
 13 test); *Lengele v. Willamette Leadership Acad.*, 641 F. Supp. 3d 956, 961 (D. Or. 2022) (same).⁵
 14 For the reasons below, the Court finds that Ms. Brooks does not sufficiently allege that she has
 15 been deprived of a constitutional right by Defendants, and therefore does not analyze whether she
 16 has stated a claim under *Monell*.

17 (a) *Due Process Under the Fourteenth Amendment*

18 (i) *Procedural Due Process*

19 The Fourteenth Amendment’s Due Process Clause prohibits the government from
 20 depriving “any person of life, liberty, or property, without due process of law.” U.S. Const. amend.

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⁵ Ms. Brooks’ citation to 42 U.S.C. § 2000d-7, Dkt. No. 7 at 8, 13, does not support the proposition that the Washington
 22 Department of Commerce, an arm of the state, is without Eleventh Amendment immunity for alleged constitutional
 23 violations under Section 1983. *See e.g., Monell*, 436 U.S. at 690 n.54; *Nelson v. Cal. Emp. Dev. Dep’t*, No. 21-CV-
 24 2145-JAH-MDD, 2022 WL 687150, at *4 (S.D. Cal. Mar. 8, 2022); *Mayorga v. Washington*, No. C17-0934-RSL,
 2018 WL 1792195, at *2 (W.D. Wash. Apr. 16, 2018). Accordingly, the Court dismisses with prejudice any Section
 1983 claims against the Washington State Department of Commerce. *See, e.g., Stoner v. Arizona*, No. CV-23-01065-
 PHX-SMM, 2023 WL 4297651, at *3 (D. Ariz. June 30, 2023); *Leigh v. Dep’t of Lab. & Industries*[], No. 3:20-CV-
 6254-BHS, 2021 WL 135868, at *3 (W.D. Wash. Jan. 14, 2021).

1 XIV § 1. “The fundamental requirement of due process is the opportunity to be heard ‘at a
 2 meaningful time and in a meaningful manner.’” *Mathews v. Eldridge*, 424 U.S. 319, 333 (1976)
 3 (quoting *Armstrong v. Manzo*, 380 U.S. 545, 552 (1965)). To plead a procedural due process claim,
 4 a plaintiff must allege two elements: (1) the plaintiff has a constitutionally protected “liberty or
 5 property interest which has been interfered with by the State”; and (2) the procedures employed to
 6 deprive the plaintiff of that liberty or property interest were constitutionally deficient. *Ky. Dep’t.
 7 of Corr. v. Thompson*, 490 U.S. 454, 460 (1989); *accord Brewster v. Bd. of Educ. of Lynwood
 8 Unified Sch. Dist.*, 149 F.3d 971, 982 (9th Cir. 1998).

9 To have a property interest in a benefit, a person must “have a legitimate claim of
 10 entitlement to it.” *Bd. of Regents v. Roth*, 408 U.S. 564, 577 (1972). Here, taking all factual
 11 allegations as true, Ms. Brooks plausibly alleges that she qualified for and was entitled to receive
 12 ERA relief, satisfying the first element of a procedural due process claim. *See* Dkt. No. 7 at 4–5,
 13 17; *see also*, e.g., *Jeffries v. Maryland Dep’t of Hous. & Cnty. Dev.*, No. 8:22-CV-00526-AAQ,
 14 2023 WL 6976066, at *3 (D. Md. Oct. 23, 2023). However, Ms. Brooks fails to adequately set
 15 forth how Defendants’ procedures with respect to her application were constitutionally deficient.
 16 *See Al-Farouk v. Nelson*, No. 2:23-CV-01372-CDS-VCF, 2023 WL 6794224, at *2 (D. Nev. Oct.
 17 13, 2023) (“While plaintiff is unhappy with the result, this by itself does not render the procedural
 18 process inadequate.”). She alleges that a Livestories agent requested documentation from her
 19 landlord, and that her application was then denied due to her landlord’s nonparticipation, and also
 20 that Community Action would not accept the “self-attestation forms” used for a previous grant.
 21 Dkt. No. 7 at 5.⁶ She further claims that Livestories had authorization to issue final approval for
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23 ⁶ Ms. Brooks attaches exhibits to her complaint that suggest her application was denied for failing to submit requested
 24 financial documentation such as paystubs. *Id.* at 17, 20; *see also Paulsen v. CNF Inc.*, 559 F.3d 1061, 1071 (9th Cir.
 2009) (courts accept material factual allegations as true and construe them in the light most favorable to the plaintiff,
 but “do not necessarily assume the truth of legal conclusions merely because they are cast in the form of factual

1 her application but “flagged” it “without due process or investigating,” and that Livestories’
 2 “standard practice only allows a 5-day appeal and grievance window[.]” Dkt. No. 7 at 6.

3 In short, the portions of Ms. Brooks’ amended complaint targeting Livestories and
 4 Community Action for procedural due process violations contain insufficient non-conclusory
 5 factual allegations regarding *how* or *why* these organizations’ actions deprived her of appropriate
 6 procedural safeguards. *Id.* at 8–9; *see also*, e.g., *Van Den Heuvel v. Dorothy*, No. 2:21-CV-2176-
 7 TLN-CKD-PS, 2022 WL 95237, at *4–5 (E.D. Cal. Jan. 10, 2022) (dismissing procedural due
 8 process claim where plaintiff failed to adequately explain what process he was or was not afforded
 9 by the defendant either before or after the alleged deprivation). For example, she claims that
 10 Livestories’ five-day appeal deadline shows “callousness over the outcome of households facing
 11 homelessness,” but does not state whether she in fact appealed or attempted to appeal the
 12 organization’s decision. Dkt. No. 7 at 9. And her other allegations in support of this claim are
 13 wholly conclusory. *See, e.g., id.* at 10 (“Defendants denying Brooks without procedural due
 14 process put her in a position to lose her home and cause the deprivation, a direct violation of the
 15 14th amendment . . . ‘Due Process Clause.’”).

16 Accordingly, the Court dismisses Ms. Brooks’ procedural due process claim without
 17 prejudice. In any amended pleading, Ms. Brooks must provide specific factual allegations
 18 explaining when and how her application was denied, whether she was able to respond to or appeal
 19 the denial, and what specific elements of Defendants’ procedures infringed on her constitutional
 20 protections.

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allegations” and are not “required to accept as true conclusory allegations that are contradicted by documents referred
 to in the complaint”).

(ii) Substantive Due Process

Ms. Brooks' amended complaint also "brings forth a Claim of State Created Danger by Negligence." Dkt. No. 7 at 10; *see also id.* at 13. The Court construes this claim as rooted in the substantive element of the Fourteenth Amendment's Due Process Clause.⁷ As the Ninth Circuit recently explained, "[t]he Due Process Clause is a *limitation* on state action rather than a *guarantee of minimum levels* of state protections[.]" *Murguia v. Langdon*, 61 F.4th 1096, 1106 (9th Cir. 2023). However, there is an exception to this rule "when the state affirmatively places the plaintiff in danger by acting with 'deliberate indifference' to a 'known or obvious danger' (the state-created danger exception)[.]" *Patel v. Kent Sch. Dist.*, 648 F.3d 965, 971–72 (9th Cir. 2011) (quoting *L.W. v. Grubbs*, 92 F.3d 894, 900 (9th Cir. 1996)). The state-created danger exception has two prongs: "First, the exception applies only where there is affirmative conduct on the part of the state in placing the plaintiff in danger. Second, the exception applies only where the state acts with deliberate indifference to a known or obvious danger." *Murguia*, 61 F.4th at 1111 (cleaned up). To meet this first requirement, a plaintiff must show that the defendant's "affirmative actions created or exposed him to an actual, particularized danger that he would not otherwise have faced." *Id.* (cleaned up); *see also Munger v. City of Glasgow Police Dep't*, 227 F.3d 1082, 1086 (9th Cir. 2000) ("[W]e examine whether the officers left the person in a situation that was more dangerous than the one in which they found him."). With respect to the second requirement, deliberate indifference is a "stringent" standard that "is higher than gross negligence and requires a culpable mental state." *Murguia*, 61 F.4th at 1111. "For a defendant to act with deliberate indifference, he must recognize the unreasonable risk and actually intend to expose the plaintiff to such risks

⁷ To the extent Ms. Brooks alleges state law claims for negligence or negligent infliction of emotional distress, *see id.* at 7, 10, such claims fail because she does not plead with any specificity the duty Defendants owed to her, *see, e.g., Leishman v. Washington Att'y Gen.'s Off.*, No. 2:20-CV-861-JNW, 2023 WL 7166183, at *11–12 (W.D. Wash. Oct. 31, 2023), reconsideration denied, 2023 WL 8879127 (W.D. Wash. Dec. 22, 2023).

1 without regard to the consequences to the plaintiff"; in other words, "to know that something is
 2 going to happen but ignore the risk and expose the plaintiff to it." *Herrera v. Los Angeles Unified*
 3 *Sch. Dist.*, 18 F.4th 1156, 1158–59 (9th Cir. 2021) (cleaned up).

4 Ms. Brooks' amended complaint does not plausibly allege either requirement. First, she
 5 does not allege any affirmative action on the part of Defendants that put her in a different, more
 6 dangerous position than she was already facing. In other words, Ms. Brooks would be facing
 7 eviction with or without Defendants' denial, and it is Defendants' *inaction*, or failure to grant
 8 relief, that she seeks to challenge. *See* Dkt. No. 7 at 6. Likewise, although Ms. Brooks alleges that
 9 Defendants Livestories and Yamauchi "demonstrated reckless disregard [for her] risks of eviction
 10 and mental health status when failing to act and carry out the [ERA] program[']s purpose," *id.* at
 11 10, such conclusory allegations do not plausibly establish a culpable mental state and are
 12 insufficient to support a claim under Section 1983. *See Ivey*, 673 F.2d at 268. Thus, Ms. Brooks'
 13 state-created danger claim is also dismissed.

14 3. Ms. Brooks' Remaining Claims Are Insufficiently Pleading

15 Liberally construing Ms. Brooks' amended complaint, the Court discerns two other
 16 possible claims related to (1) Yamauchi's purported conflict of interest and (2) Community
 17 Action's apparent waiver of a defense under Section 4.96.020 of the Revised Code of Washington.
 18 Dkt. No. 7 at 9, 11. Neither claim is sufficiently pleaded and therefore both claims are also
 19 dismissed.

20 (a) *Yamauchi's Conflict of Interest*

21 Ms. Brooks alleges that "Yamauchi and another director ha[ve] a conflict of interest with
 22 a very adverse party to her personal rental situation," *id.* at 6 (citing *id.* at 23), and that "Yamauchi
 23 in her position of authority . . . ultimately abused her position of power to prevent county wide
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1 knew of allowed [sic] the denial without due process or equal protection[i]n violation of 18 U.S.C.
 2 § 208,” *id.* at 9.

3 As a threshold matter, Ms. Brooks’ citation to 18 U.S.C. § 208 is unavailing both because
 4 it is a criminal statute and because it does not appear to apply to non-federal employees. *See Aldabe*
 5 *v. Aldabe*, 616 F.2d 1089, 1092 (9th Cir. 1980) (per curiam) (“[C]riminal provisions . . . provide
 6 no basis for civil liability.”); *see also Allen v. Gold Country Casino*, 464 F.3d 1044, 1048 (9th Cir.
 7 2006). Moreover, these allegations lack the specificity for the Court and Defendants to understand
 8 what is being alleged. *See* Fed. R. Civ. P. 8(a); *Iqbal*, 556 U.S. at 678; *Twombly*, 550 U.S. at 555.
 9 To the extent Ms. Brooks wishes to re-allege a claim here, she should include specific, non-
 10 conclusory factual allegations regarding Yamauchi’s purported “conflict” such that Yamauchi and
 11 the Court will be able to understand the legal claim asserted.

12 (b) *Section 4.96.020(2) of the Revised Code of Washington*

13 Similarly, the Court is unable to decipher Ms. Brook’s fourth claim, “Defendant
 14 [Community Action] barred from a defense,” which cites to Section 4.96.020(2) of the Revised
 15 Code of Washington. Dkt. No. 7 at 11. This statute relates to notice of claims for “[t]ortious
 16 conduct of local governmental entities and their agents,” Wash. Rev. Code § 4.96.020, but it is
 17 “well settled that state notice of claim provisions are inapplicable to § 1983 actions.” *Bos. v. Kitsap*
 18 *Cnty.*, 852 F.3d 1182, 1185 (9th Cir. 2017). In any event, Ms. Brooks’ pleading appears
 19 incomplete. *See, e.g.*, Dkt. No. 7 at 11 (“Plaintiff brings forth [a] claim for which [Community
 20 Action] is barred from raising a defense to this claim, pursuant to RCW 4.96.020(2) for failure to
 21 comply with the requirements of tortious [sic]. . . . Entities are required to have available and
 22 accessible [sic][.]”). If Ms. Brooks intends to claim that Community Action “has waived its right
 23 to any defenses available in such law” by failing to “make available on its website” the information
 24 required under this state statute, *id.*, she must include specific factual allegations in support of such

1 a claim and also explain why this statute applies in this case. *Cf. Cronk v. City of W. Richland*, No.
2 4:14-CV-5041-EFS, 2015 WL 853863, at *3 (E.D. Wash. Feb. 26, 2015).

3 **D. Ms. Brooks is Granted Leave to Amend**

4 Even though the Court is once again dismissing Ms. Brooks' complaint for failure to state
5 a claim, it will grant her one final opportunity to cure the deficiencies identified herein. *See Lucas*
6 *v. Dep't of Corr.*, 66 F.3d 245, 248 (9th Cir. 1995) (per curiam) ("Unless it is absolutely clear that
7 no amendment can cure the defect . . . a pro se litigant is entitled to notice of the complaint's
8 deficiencies and an opportunity to amend prior to dismissal of the action."). However, the Court
9 cautions Ms. Brooks to thoroughly review this Order and to ensure that any amended pleading
10 addresses the issues it has identified in her amended complaint.

11 **III. CONCLUSION**

12 For the foregoing reasons, the Court ORDERS as follows:

- 13 1. Any claims under 42 U.S.C. § 1983 against Defendant Washington State Department
14 of Commerce are DISMISSED with prejudice.
- 15 2. The remainder of Ms. Brooks' amended complaint is DISMISSED without prejudice
16 and with leave to amend by February 12, 2024. A timely filed amended complaint
17 operates as a complete substitute for an original pleading. *See Ferdik v. Bonzelet*, 963
18 F.2d 1258, 1262 (9th Cir. 1992).
- 19 3. In accordance with this Order, any amended complaint must clearly identify the
20 defendant(s), the claim(s) asserted, the specific facts that Ms. Brooks believes support
21 each claim, and the specific relief requested.

4. This is Ms. Brooks' final opportunity to cure her pleading. If she does not file a second amended complaint by February 12, 2024 that cures the deficiencies identified herein, this action will be dismissed with prejudice.

Dated this 16th day of January, 2024.

Lauren King
Lauren King
United States District Judge